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WRITER'S DIRECT DIAL:

September 29, 2017

Honorable A. Kathleen Tomlinson
United States Magistrate Judge
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

RE: Diane Madden v. TOH et al.
16-cv-6835 (LDW)(AKT)

Dolores Storno et al. v. TOH et al.
16-cv-6837 (LDW)(AKT)

Dear Judge Tomlinson:

With regard to the above mentioned matters, this office is Special Counsel to the Town of Hempstead. At the status conference on September 12, 2017, Your Honor requested that the parties provide you with a status update regarding the production of ESI.

As the Court was previously advised, the parties entered into an agreement that was so ordered by the Court on May 3, 2017. *See* [DE31] and [DE25], respectively. The search terms agreed to by the parties include 54 common terms, 15 terms related to the *Madden* matter only and 20 terms related only to the *Storno, et al.* matter. All search terms were to be searched within seven (7) different mailboxes. Defense counsel met with the Town's IT department on May 12, 2017 and on May 22, 2017 the Town provided this office with an external hard drive containing approximately 70,000 emails, many of which are multiple pages and many include attachments. The Town's production was provided to us in pdf format because the Town utilizes Groupwise as its email server. We have been unsuccessful in finding a program that will search emails in pdf format and thus, the review of ESI must be done manually, one email at a time.

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On June 6, 2017, three (3) attorneys began to review the Town's ESI. To date, approximately 5,000 emails have been reviewed, segregated into production and privilege and for those emails to be produced, redactions have been made. Defense counsel served its' first rolling production of ESI on August 23, 2017 which included a review of approximately 5,000 emails which resulted in a production of 1,946 bates stamped documents.

At the conference, my partner, Donna Napolitano, advised Your Honor that I had been in contact with several law schools in order to employ law students to review the remaining ESI on a full time basis (we anticipated hiring at least three (3) to four (4) law students to work five (5) days a week). We began the process of contacting law schools in mid-July; however, the schools were unable to provide us with any law students during the summer as those students seeking intern positions had already secured same and were working.

I then followed up with the schools in late August/beginning of September anticipating that students would welcome the possibility of working during their fall semester. We were quite surprised that not one law school provided us with any student. As a result, after the conference before Your Honor, Ms. Napolitano contacted a Long Island agency specializing in temporary legal assistance and spoke with them regarding hiring several paralegals and/or attorneys to perform ESI review. Surprisingly, they were only able to find one person who *might have* been interested in undertaking the ESI review. The person with whom Ms. Napolitano spoke with indicated that the difficulty was the fact that the review of the ESI had to be done manually without benefit of an ESI computer program.

Approximately one week ago, I contacted a paralegal who was a former employee of this firm and offered her a full time temporary position and inquired if she was aware of any other paralegal/attorney that would also be interested in a temporary position reviewing ESI. I can now advise the Court that we have hired two (2) individuals who will work full time exclusively reviewing ESI and in fact, they began working on the ESI as of yesterday. Our office will provide Plaintiffs with weekly productions of all reviewed ESI beginning October 9, 2017.

Plaintiffs' counsel has advised that after hiring a law school graduate to assist, their ESI production relevant to the *Madden* matter is currently in the process of a privilege review. With regard to the *Stormo et al.* matter, they are in negotiations with an ESI vendor to complete the ESI review and production.

The Court might also remember that some of the initial search terms were very broad and resulted in the production of a significant amount of documents by the Town which, more likely than not, will ultimately be determined to be unrelated to these matters. Therefore, at the direction of Your Honor, Counsel has engaged in discussions to narrow some of the terms in order to reduce the volume of ESI documents that will require review and production.

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Further, in light of the September 12, 2017 Orders issued by District Judge Leonard D. Wexler setting June 2018 for the trials in the referenced matters, the parties will file a letter motion to Judge Wexler requesting an extension of time to the discovery deadline from November 15, 2017 to January 15, 2018. The extension will, in no way, affect the scheduled trial date; however it will provide the parties with time to complete ESI discovery and conduct depositions.

Should the Court have any questions, please feel free to contact either myself at extension 258 or Ms. Napolitano at extension 211.

Respectfully Submitted,

BERKMAN, HENOCH, PETERSON,
PEDDY and FENCHEL, P.C.

By: /s/ Joseph E. Macy
Joseph E. Macy
Donna A. Napolitano